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WRIGHT et ux. v. WRIGHT et al.

Nov. 14, 1918.

[97 S. E. 358.]

1. **Equity (§ 325*)—Uncontroverted Allegations—Necessity of Proof.**—Allegations of a bill neither admitted nor denied by the answer must be proved upon the hearing.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 127.]

2. **Wills (§ 302 (8)*)—Lost Will—Evidence.**—In a suit to establish a lost will evidence held not to sustain complainants' burden of proof of the existence of the will and its destruction.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 769.]

3. **Wills (§ 289*)—Burden of Proof—Lost Will.**—The mere fact that complainants in a suit to establish a lost will have testified to its existence and destruction, and to its contents, does not shift the burden of proof to defendant.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 768.]

4. **Wills (§ 302 (8)*)—Probate—Establishment of Lost Will.**—To establish the existence and destruction of a lost will, the complainants' burden of proof is not satisfied by a mere preponderance of evidence; proof beyond a reasonable doubt being more nearly within the requirements as generally recognized.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 768.]

Appeal from Circuit Court, Albemarle County.

Proceedings by Thos. W. Wright, Jr., and wife, against Edward B. Wright and others, to establish a will. Decree for defendants, and plaintiffs appeal. Affirmed.

E. O. McCue and *Allen & Walsh*, all of Charlottesville, for appellants.

Watson & Bolling, of Charlottesville, for appellees.

STRAWBERRY HILL LAND CORPORATION v. STARBUCK et al.

Nov. 14, 1918.

[97 S. E. 362.]

1. **Constitutional Law (§ 63 (2)*)—Power of Legislature—Delegation—Drainage Districts.**—The General Assembly has power to provide for drainage of swamp lands by creation of local drainage districts, to delegate their power to local agencies to organize sys-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

tems of drainage within their boundaries, and to assess cost against property benefited.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 170; 4 Va.-W. Va. Enc. Dig. 825.]

2. Constitutional Law (§ 26*)—Grant or Limitation of Power—State Constitution.—A state Constitution is not a grant of power, but only restriction of powers otherwise practically unlimited.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 145.]

3. Constitutional Law (§ 48*)—Statutes—Presumption of Validity.—Every fair doubt must be resolved in favor of constitutionality of an act.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 152.]

4. Statutes (§ 64 (1)*)—Partial Invalidity.—An act may be valid in one part and invalid in another, and, if invalid part is severable from remainder, it may be ignored, if remaining portions are sufficient to accomplish their purpose.

[Ed. Note.—For other cases, see 15 Va.-W. Va. Enc. Dig. 195.]

5. Statutes (§ 64 (5)*)—Partial Invalidity—Drainage.—Invalidity of Acts 1914, c. 332, § 2, providing for payment of preliminary costs of drainage improvement by board of supervisors of county in whose circuit court petition was filed, does not invalidate whole act.

[Ed. Note.—For other cases, see 15 Va.-W. Va. Enc. Dig. 195.]

6. Drains (§ 13*)—Drainage Districts—Nature—"Corporation."—A drainage district, created by the Legislature, is not a private corporation; the definition of "corporation" contained in Const. art. 12, § 153, as including trusts, associations, and joint-stock companies with powers not possessed by individuals and partnerships, and excluding municipal corporations and institutions owned or controlled by the state, not applying.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Corporation.* For other cases, see 3 Va.-W. Va. Enc. Dig. 515-6.]

7. Statutes (§ 77 (1)*)—General or Special Laws—Drainage Act.—A statute which applies throughout the state to all persons and property within the class specified, where the classification is reasonable and not arbitrary, is not special, but general, and within this rule the drainage law is general.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 749.]

8. Statutes (§ 80 (4)*)—Special Law—Creation of Private Corporations—Drainage District.—Acts 1914, c. 332, providing for establishment of drainage districts, etc., is not special or private law for creating private corporations, within Const. art. 4, § 63.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 825; 12 Va.-W. Va. Enc. Dig. 749.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

9. Drains (§ 2 (1*))—Establishment of Drainage Districts—Constitutionality.—Acts 1914, c. 332, providing for establishment of drainage districts, etc., is not violative of Const. art. 12, § 156a, providing that the state Corporation Commission shall be the department through which shall be issued all charters for domestic corporations, etc.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 222.]

10. Words and Phrases—"Such."—The synonyms of "such" are like, similar, of that kind, of the like kind; "such" representing the object as already particularized in terms which are not mentioned, being a descriptive and relative word, referring to the last antecedent.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Such.]

11. Drains (§ 67*)—Assessment of Cost of Improvement—Constitution.—Acts 1914, c. 332, providing for establishment of drainage districts, and by sections 29 and 32 providing for assessment and issuance of bonds, held not violative of Const. art. 12, § 170, providing no city or town shall impose any assessment upon abutting landowners for public local improvements, except those specified, and that "except in cities and towns no such taxes or assessments shall be imposed on abutting landowners."

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 222.]

12. Drains (§ 2 (1*))—Police Power.—The drainage law is sustained, under Const. § 159, which provides that the exercise of the police power shall never be abridged.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 225.]

13. Constitutional Law (§ 81*)—"Police Power" of State.—"Police power" of state not only embraces regulations designed to promote public convenience and general prosperity, but also those designed to promote public health, morals, or safety.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Police Power. For other cases, see 3 Va.-W. Va. Enc. Dig. 225.]

14. Drains (§ 67*)—Constitutional Provisions—Taxation.—Drainage law is sustained by Const. art. 1, § 6, expressly authorizing taxation and the damaging of property for public use by consent of the representatives of the people.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 269.]

15. Eminent Domain (§ 71*)—Compensation—Validity of Drainage Act.—The drainage law is valid, within Const. art. 4, § 58, au-

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thorizing private property to be taken or damaged for public use and requiring just compensation therefor.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 90, 584; 17 Va.-W. Va. Enc. Dig. 222.]

16. Jury (§ 19 (10*))—Right to Jury Trial—Establishing Drainage Districts.—The drainage law is not violative of Const. art. 1, § 11, providing that in controversies respecting property trial by jury ought to be held sacred.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 222.]

17. Constitutional Law (§ 289*)—Due Process—Drainage Act.—Drainage law is not violative of Const. Va. art. 1, § 11, providing that no person shall be deprived of his property without due process, or of Const. U. S. Amend. 14.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 584; 17 Va.-W. Va. Enc. Dig. 222.]

Appeal from Circuit Court, Henrico County.

Suit by the Strawberry Hill Land Corporation against D. W. Starbuck and others. From a decree for defendants, plaintiff appeals. Affirmed.

R. W. Carrington, of Richmond, and *McNeill & Bremner*, for appellant.

R. Grayson Dashiell, of Richmond, and *Wolcott, Wolcott, Lankford & Kear*, of Norfolk, for appellees.

CALHOUN *v.* MASSIE.

Nov. 14, 1918.

[97 S. E. 576.]

1. Courts (§ 468*)—Finding of Court of Claims—Omnibus Claims Act.—Finding of Court of Claims approving defendant's claim under Omnibus Claims Act, approved March 4, 1915, for property taken by Federal forces during Civil War, though authorized by statute (U. S. Comp. St. 1916, § 1142), was not a judgment, and created no vested rights.

2. United States (§ 94*)—Claims Against—Right to Attach Conditions.—The United States had same right to reject in toto a claim for property taken by Federal forces in Civil War, or, when Omnibus Claims Act, approved March 4, 1915, was passed, to attach conditions to its payment limiting amount any claim agent might re-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.